

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-5416-2016 (O&M)

Date of Decision: 19.07.2019

Pawan Ahuja

.... Appellant

Versus

Goverdhan Singh Rana

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Parminder Singh, Advocate for the appellant.

Mr. Vivek K. Thakur, Advocate for the respondent-caveator.

RAMENDRA JAIN, J. (ORAL)

The un-successful appellant-defendant, has filed the instant regular second appeal against judgment and decree of the Ist Appellate Court dated 24.02.2016, affirming the judgment and decree dated 26.04.2015 of the trial Court, whereby suit of respondent-plaintiff for possession by way of specific performance was decreed in *toto*.

Briefly, respondent-plaintiff filed a suit for possession by way of specific performance, on the basis of agreement to sell dated 04.01.2008, qua land measuring 8 marlas, fully detailed in opening part of judgment of the trial Court, pleading that, at the time of execution of agreement to sell, the appellant-defendant had received ₹1,00,000/- as earnest money and remaining sale consideration of ₹1,80,000/- had to be paid, at the time of execution and registration of sale deed on or before

10.01.2008. On the said date, respondent-plaintiff remained present in the office of Sub Registrar, Nangal, for execution and registration of sale deed, since morning till evening, but the appellant-defendant did not turn up. He requested the appellant-defendant many a times to execute sale deed in his favour, but in vain. Upon notice, appellant-defendant contested the suit tooth and nail.

After holding trial, the trial Court decreed the suit vide judgment and decree dated 23.04.2015.

Being aggrieved, the appellant-defendant approached the Ist Appellate Court, but remained un-successful as his appeal was dismissed vide judgment dated 24.02.2016.

Learned counsel for the appellant-defendant *inter alia* contends that on the alleged date of execution of agreement to sell by him in favour of respondent-plaintiff, appellant was not shown as owner of the suit land in the revenue record. Out of three attesting witnesses of the agreement to sell (Ex. P-1), two, namely; PW-2 Chander Kumar and PW-3-Bakhtawar Singh, were examined, but their statements were contradictory to each other, inasmuch as, one of the marginal witness testified that earnest money of ₹50,000/- was paid, whereas the other attesting witness deposed in consonance with the impugned agreement to sell. That apart, one of the marginal witness testified that it was Sunday, on the date when the impugned agreement to sell (Ex. P-1) was allegedly executed by the appellant-defendant, contrary to the fact the it was Friday. Both the Courts below failed to appreciate that the appellant-defendant was already in litigation with respondent-plaintiff, therefore, he

forged and fabricated the agreement to sell (Ex. P-1).

On the other hand, learned counsel for the respondent-plaintiff, refuting the above submissions contends that both the Courts below have rightly disbelieved false/contradictory stand of the appellant-defendant that he had executed the agreement for some other purpose i.e. for management of suit property and not in the shape of agreement to sell.

Having given thoughtful submissions to the rival submissions, this Court finds the instant regular second appeal completely devoid of any merits for the reasons to follow:-

No alleged forgery or fraud could have been committed by the respondent-plaintiff with the appellant-defendant, because of some earlier litigation in between them filed by appellant-defendant against some third person, impleading respondent-plaintiff as party. The said suit of the appellant-defendant was decreed in his favour against third person, declaring the appellant-defendant as owner in possession of the suit land. Consequently, for execution of judgment and decree in his favour when the appellant-defendant with the help of revenue officials went to the spot to take possession, on request of respondent-plaintiff, he agreed to sell the suit land to him vide impugned agreement to sell (Ex. P-1). The sequence of events narrated above proves beyond any doubt that whatever transaction took place in between the parties was in natural course.

By this time, it is well settled proposition of law that statement of a witness has to be read as a whole and not in isolation. In case, statements of both the marginal witnesses of the agreement to sell

i.e. PW-2 Chander Kumar and PW-3 Bakhtawar Singh, are taken into consideration as a whole, the only irresistible conclusion which can be drawn is that the appellant-defendant had executed the agreement to sell in question in favour of respondent-plaintiff.

There is no necessity under any law in this country that a document should be got scribed through some deed writer. Therefore, argument of counsel for the appellant-defendant that no such person was examined, relates to insignificant aspect of the case and the same is rejected, being meritless.

Both the Courts below have recorded concurrent findings against the appellant-defendant, after appreciation of evidence. Therefore, this Court is not inclined to differ with the same.

No question of law much less substantial has been raised in this appeal. Therefore, the same is held not maintainable.

The instant appeal, being completely devoid of any merit is dismissed.

July 19, 2019
rishu

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No